

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,

Plaintiff and Counterclaim-Defendant,

v.

PATRICK S. DITKO, in his capacity as
Administrator of the Estate of Stephen J.
Ditko,

Defendant and Counterclaimant.

Case No.: 1:21-cv-7959-LAK

Hon. Lewis A. Kaplan

**DECLARATION OF MARC
TOBEROFF IN REPLY TO
MARVEL CHARACTERS INC.'S
OPPOSITION TO PATRICK S.
DITKO'S MOTION FOR SUMMARY
JUDGEMENT**

PATRICK S. DITKO, in his capacity as
Administrator of the Estate of Stephen J.
Ditko,

Counterclaimant,

v.

MARVEL CHARACTERS, INC. and DOES
1-10, inclusive,

Counterclaim-Defendants.

I, Marc Toberoff, declare as follows:

1. I am counsel for Defendant and Counterclaimant Patrick S. Ditko (“Defendant”) and a member of the Bar of this Court. I submit this declaration based on my personal knowledge and review of the documents referenced herein. If called and sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 67** is a true and correct copy of excerpts from the transcript of Martin Goodman’s December 14, 1967 examination before trial in *Joseph H. Simon v. Martin Goodman et al.* (N.Y. 1966), produced by Plaintiff Marvel Characters, Inc. (“MCI”) in discovery in this matter and identified by the Bates numbers 2021MARVEL-0041165 – 2021MARVEL-0041264. A selective excerpt from this December 14, 1967 transcript was previously proffered by MCI but the relevant pages here attached were omitted by MCI. *See* Declaration of Molly Lens, Exhibit 90 (Dkt. No. 94-10).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and was executed on July 20, 2023, in Malibu, California.

By: /s/ Marc Toberoff
Marc Toberoff